IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

Crl.O.P.Nos: 16906 OF 2004

....

Mrs.P.Meena .. Petitioner

Vs.

M/s.Nikon Forex Private Limited,
No.3 (New No.5) 7th Street,
Gopalapuram, Chennai-86
rep. By its Managing Director
Mr.A.Arockiaswamy .. Respondent

Criminal Original Petition has been filed under Section 482 Cr.P.C., praying this court to call for the records in C.c.NO.3511 of 2004 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the entire proceedings.

For Petitioner :: Mr.G.M.Syed Fasiuddin

For respondents :: M/s.P.Murugan
K.Seetha Ram

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., praying this court to call for the records in C.C.No.3511 of 2004 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the entire proceedings.

2. The petitioner is the 4th accused in C.C.No:3511 of 2004 pending on the file of the VII Metropolitan Magistrate,George Town, Chennai, which was taken up on a private complaint laid by the respondent herein. It is the allegation in the complaint that the first respondent-Company has issued two cheques on 5.12.2003 each for Rs.9,66,000/= in its favour. Later, they were dishonoured.

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3. The learned counsel for the petitioner would submit that the petitioner is in no way connected with the affairs of the first accused business, nor is she a Director in the said establishment and her arraying as an accused in the above said case is not legally sustainable. In support of his contention, he draws attention of this court to the allegations set out in the complaint which goes to the effect that the second accused is monitoring the entire business of the first accused who is also Managing Director of the first accused and third and fourth accused are the Directors of first accused and all of them know day to day business affairs and activities of first accused and they shall be deemed to be guilty of the offence and all are liable to be proceeded and punished under Sections 138 to 142 of the Negotiable Instruments Act. Learned counsel would further contend that the petitioner is not at all a Director to the first Accused-Company, which is evident from Form No.32, registered with the Registrar of Companies under the Companies Act. He has produced a certified copy of the said Form NO.32 in which it is stated that A.2 and A.3 alone are Directors. So prima facie it shows that the petitioner is not at all a Director of the first accused-company.

4. Learned counsel for the petitioner further submits that in view of the settled principles of law, if any person who is not at all in charge of the affairs of the company, no criminal liability or vicarious liability could be fastened against the said person and the ingredients in Section 141 of the Negotiable Instruments Act have to be fulfilled. He further argues that she is not at an authorised signatory, whose signature is not found in the cheques and hence she is not responsible for the claim. In support of his contention, he gathered support from a decision of the Hon'ble Supreme Court of India, in N.K.Wahi V. Shekhar Singh & Others, reported in 2007 (2) Supreme, 811, in which Their Lordhips have referred to an earlier decision of the said court in 2005 (8) SCC 89 (S.M.S.paharmaceuticals Ltd., Vs. Neeta Bhalla and another) and formulated the principles as follows:-

> "13. In S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another (2005 (8) SCC 89) it was, inter alia, held as follows:-
>
> "18.To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case

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should be spelled out in the complaint against the person sought to be made labile. Section 141 of the Act contain the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. The complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a Director in a company, is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person should to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the reference are as under:-

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be a charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable shoud be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases."

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5. Following the dictum laid down by the Apex Court, wile the facts of the present case are considered, it could very well be held that since the petitioner is neither a Director, nor a person in-charge of the business of the first accused-company, she could not be held to be responsible for the cheque amount.

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6. Learned counsel for the respondent would strenuously contend that before filing of the complaint, statutory notice was issued to all the accused and the present petitioner received the notices in four addresses where the business activities of the first accused-company are going on and the receipt of the notice and failure to send any reply to the same itself is enough to hold that she is in charge of the business. In the above circumstances, by no stretch of imagination it could be stated that she is connected to the business. He further submits that the attitude on the part of the petitioner would attract the ingredients of Section 141 of the Negotiable Instruments Act. Section 141 (a) of the Negotiable Instruments Act reads thus:-

> "141. Offences by companies--(a) If the person committing an offence under Section 138 is a company, every person, who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

7. Based upon the above said provision, he further argued that as mentioned in the provision since she is in charge of the business, she is fully responsible for the company affairs and conduct of the business. So she shall be deemed to be guilty of the offence.

8. The contention of the learned counsel for the respondent could not be countenanced in view of the proposition of law laid down by the Hon'ble Supreme Court of India. It has been consistently held that if a person is not a Director, nor connected to the affairs of the business, no liability could be fastened on him. In the legal background of this mater, it has to be necessarily held that the petitioner is not at all liable for the cheque amount.

9. In fine, the Criminal original Petition is allowed quashing the proceedings in C.C.No:3511 of 2004 on the file of the learned VII Metropolitan Magistrate, George Gown, Chennai, with respect to this petitioner alone.

gkv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The VII Metropolitan Magistrate
   George Town, Chennai.

2. The Public Prosecutor
   High Court, Chennai-104

+ 1 cc to Mr. P. Murugan, Advocate, SR No.69757

+ 1 cc to M/s. G. M. Syed Fasiuddin, Advocate, SR No.69576

MS(CO)
SR/6.12.2007

Order in
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